IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 44 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

JAGABHAI JASHABHAI BHARWAD

Versus

STATE OF GUJARAT

Appearance:

MR SHAKEEL A QURESHI for Petitioner

MR KT DAVE APP for Respondent No. 1 to 4

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 10/03/2000

ORAL JUDGEMENT

#. Notice under section 59 of the Bombay Police Act ("the Act" for short) was issued by the Sub Divisional

Rajkot, upon the petitioner to show cause why the proceedings under section 56(b) of the Act may not be initiated against him. After conclusion of the externment proceedings, an order came to be passed by the Sub Divisional Magistrate, Rajkot, on June 29, 1999, in exercise of powers under section 56(b) of the Act.

#. The externing authority, both in the show cause notice as well as in the externment order placed reliance on the following offences registered against the petitioner.

1. Cr.No.27/96 registered with Kotda Sangani Police Station, under Sections 147, 148, 149, 324, 337, 506(2) and 135 of B.P.Act.
2. CR No. 61/96 registered with Kotda Sangani Police Station, under Sections 323, 504, 506(2).
3. CR No.122/96 registered with Kotda Sangani Police Station, under Sections 324, 323, 504, 506(2).
4. CR No. 8/99 registered with Kotda Sangani Police Station under Sections 324 and 524.
5. CR No.20/96 registered with Kotda Sangani Police Station under Sections 107, 116(3) and 152.
6. CR No. 173/96 registered with Kotda Sangani Police Station under Sections 107, 116(3) and 151.
7. CR No.2/98 registered with Kotda Sangani Police Station under Sections 110 of Cr.P.C.
8. CR No.4/99 registered with Kotda Sangani Police Station under Sections 107, 116(3) and 151.

Ultimately, the petitioner was externed by the impugned order dated 29th June, 1999 for a period of one year from the territorial jurisdiction of Police Commissionerate, Rajkot as well as the districts of Jamnagar, Amreli, Junagadh and Rajkot (Rural).

#. Aggrieved by the said order, the petitioner/externee challenged the same before appellate authority as provided under section 60 of the Act and appellate authority dismissed the appeal by order dated October 6, 1999.

#. Being aggrieved by the said externment order and the order of the appellate authority, the petitioner has approached this Hon'ble Court under Article 226 of the Constitution of India, assailing the said orders on various grounds.

#. Mr. Qureshi, learned counsel appearing for the petitioner has, however, restricted his arguments to the

legal point of consideration of irrelevant and extraneous material. To substantiate his arguments, he submitted that the order is passed under section 56(b) of the Act and the offences that can be considered while passing the order should be the offences under Chapters 12, 16 and 17 of the I.P.C. In the instant case, the externing authority has taken into consideration four cases under sections 107 or 110 of Cr.P.C. which did not fall under any of the Chapters stated in Section 56 clause (b) of the Act. This is an irrelevant and extraneous factor which has been considered by the externing authority while passing the order and therefore, the petition may be allowed.

#. Mr. K.T.Dave, learned APP has opposed this petition. According to him, these cases were in addition to other cases and therefore, the order would not be vitiated.

#. It is not in dispute that the externing authority has indicated, both in the show cause notice as well as in the order under section 56(b) of the Act, the cases registered against the petitioner for proceedings under Sections 107 and 100 of the Cr.P.C. These are cases which are not contemplated to be considered while passing order under section 56(b) of the Act, and would, therefore, be irrelevant and extraneous material which has been relied upon by the externing authority while passing the impugned order. It is not possible to accept the arguments advanced by learned APP Mr. Dave that these were cases in addition to other cases and therefore, they may not vitiate the proceedings or the order. In fact, human mind cannot be compartmentalized in a way, where certain factors would be considered and certain factors, would not be considered. Apart from this, in the facts of the case, it is apparent from the externment order that the externing authority has, in fact, taken into consideration these offences as can be seen from the order itself where they have been specifically considered. When those offences are considered by externing authority, it cannot be gainsaid that the externing authority was influenced by these factors which are, as discussed above, irrelevant. In this view of the mater, the petition deserves to be allowed.

#. The petition is allowed. The impugned order of externment passed by the Sub Divisional Magistrate, Rajkot, 29th June, 1999 as well as the appellate order passed by respondent no.2 dated 6th October, 1999 are

hereby quashed and set aside. Rule is made absolute with no order as to costs.

[A.L. DAVE, J.]

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